

REMARKS

Claims 1-20 are pending. Claims 2-14 and 18-20 stand withdrawn from consideration on the merits and claims 1 and 15-17 stand rejected. This communication amends claims 1, 15, and 17, and adds new claims 21-34.

Claims 1 and 15-17 stand rejected under 35 USC 102(b) as being anticipated by US Patent 5,722,977 to Wilhelmy.

In response, the claims have been amended to recite that the tapered body section is formed by an end wall; a first pair of opposing wall portions converging toward the end wall; and a second pair of opposing wall portions converging toward the end wall. Support for this amendment can be found, for example, on pages 5-6, paragraph 29, which describe the distractor shown in FIGS. 1A and 1B. Hence, no new matter is believed entered by this amendment.

As can be seen in FIGS. 11 and 12 of Wilhelmy, the spacer disclosed therein only has one pair of opposing wall portions 19' and 21' which converge toward end wall 22. Thus, Wilhelmy does not anticipate (or suggest) the subject matter of claims 1 and 15-17, as now claimed.

With respect to the subject matter of claim 17, the spacer disclosed in Wilhelmy does not have a connector section with a detent. The connector section in the Wilhelmy spacer includes a threaded recess 28 (see column 6, lines 8-9). It is respectfully submitted that this threaded recess is not a detent. Thus, Wilhelmy does not anticipate (or suggest) the subject matter of claims 1 and 15-17, as now claimed.

In view of the foregoing, withdrawal of the 35 USC 102(b) rejection using Wilhelmy is respectfully requested.

Claims 1 and 15-17 stand rejected under 35 USC 102(b) as being anticipated by US Patent 5,947,971 to Kuslich et al. (Kuslich).

As stated above, the claims have been amended to recite that the tapered body section is formed by an end wall; a first pair of opposing wall portions converging toward the end wall; and a second pair of opposing wall portions converging toward the end wall.

There is no express or inherent description in Kuslich of such a distractor. The distraction plug disclosed in Kuslich has a generally cylindrical body 56 with a tapered forward end 58 that appears to be formed by a single frusto-conical shape wall (See FIG. 28). Thus, Kuslich does not anticipate (or suggest) the subject matter of claims 1 and 15-17, as now claimed.

With respect to the subject matter of claim 17, the distraction plug disclosed in Kuslich does not have a connector section with a detent. The connector section and detent identified in the Office Action as respective numerals 57 and 55 in Kuslich, are actually a flange and a reduced diameter portion with a threaded bore 62 formed therethrough (See column 6, lines 18-20). It is respectfully submitted that this threaded bore is not a detent. Accordingly, the subject matter of claim 17 further distinguishes the invention over Kuslich.

In view of the foregoing, withdrawal of the 35 USC 102(b) rejection using Kuslich is respectfully requested.

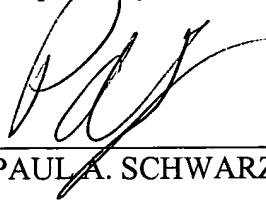
Since claim 1 is believed to be allowable and generic to dependent claims 2-14, it is respectfully submitted that claims 2-14 should now be considered on the merits as provided by 37 CFR 1.141.

New claims 21-34 recite additional features of the distractor which further distinguish the invention over the cited prior art. No new matter is believed entered by these claims as the subject matter recited therein can be found in the specification, for example, on page 6, paragraph 30 and pages 7-8, paragraph 32.

Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1-17 and 21-34 are in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

No fee is believed to be required for this communication. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 50-2061.

Respectfully submitted,



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